

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF INDIANA
HAMMOND DIVISION

IN RE:)
)
ANDREA JAMELL MOCIER,) CASE NO. 05-63748 JPK
) Chapter 7
Debtor.)

GORDON E. GOUVEIA,)
)
Plaintiff,)
)
v.) ADVERSARY NO. 06-6228
)
ANDREA JAMELL MOCIER,)
)
Defendant.)

ORDER CONCERNING MOTION FOR JUDGMENT BY DEFAULT

This adversary proceeding was initiated by a complaint filed on October 9, 2006. A certificate of service of summons and a copy of complaint was filed of record on October 9, 2006. The plaintiff filed a Motion for Entry of Default and a Motion for Judgment by Default on December 14, 2006.

The adversary proceeding seeks revocation of the debtor's/defendant's discharge based upon 11 U.S.C. § 727(a)(6)(A), due to the asserted failure of the debtor to comply with the terms of an order entered by the Court on August 17, 2006 which required the debtor to turnover certain documents to the Trustee/Plaintiff.

The motion by which the August 17, 2006 order was sought was filed on July 18, 2006. Paragraph 3 of the motion states that the "Trustee's request for turnover mailed to the Debtor at 3620 165th St. #7, Hammond, Indiana 46323 and (*sic*) then returned by the U.S. Post Office marked 'return to sender – unable to forward'." The address utilized by the Trustee for service of this motion is that stated in paragraph 3 to have been ineffective. The Notice of the motion served upon the debtor by the Trustee uses that same address. Upon entry of the order, the

Court's mailing mechanism sent a copy of the order to the debtor at this same ineffective address, and the Court's record establishes that the copy of the order sent to the debtor was returned to the Court by the United States Postal Service with the designation "Returned to Sender, Attempted – not known, Unable to Forward." The record therefore fails to establish that the debtor ever received a copy of the turnover order which is the premise for the Trustee's complaint for revocation of the debtor's discharge.

The certificate of service which established service of the adversary complaint and summons on the debtor/defendant states that service was made not only on the foregoing ineffective address, but also upon the defendant at 4819 Olcott Avenue - Apt. 2, East Chicago, Indiana 46312. Apparently, the Trustee became aware of an alternative address for the defendant and utilized that address in serving process in the adversary proceeding.

Fed.R.Bankr.P. 7004(b)(9) provides that service upon the debtor, after a petition has been filed by the debtor and until the case is dismissed or closed, is effected "by mailing a copy of the summons and complaint to the debtor at the address shown in the petition or statement of affairs, or to such other address as the debtor may designate in a filed writing" This service of process rule is also applicable in contested matters by application of Fed.R.Bankr.P. 7014(b). However, when an address to be utilized for notification of matters involving a party's substantive rights or interests is known to be ineffective, additional steps must be taken to seek to provide actual notice of those matters to that party; *Jones vs. Flowers*, 126 S.Ct.1708 (2006). Thus, as the record stands, there is no evidence that the Trustee's motion for turnover and the order entered on that motion, upon which this adversary proceeding is premised, were ever served upon the debtor. There is also no record at this time of valid service of process upon the debtor with respect to the initiation of this adversary proceeding. While the Court may by order direct that an address other than that provided by the debtor in the petition be utilized, that direction must be made by order entered before service of process in a manner other than

that required by Fed.R.Bankr.P. 7004(b)(9) is attempted.

IT IS ORDERED that a hearing will be held on **March 9, 2007, at 10:00 A.M.** to determine a course of further proceedings in this adversary proceeding, in light of the foregoing issues.

Dated at Hammond, Indiana on January 8, 2007.

/s/ J. Philip Klingeberger
J. Philip Klingeberger, Judge
United States Bankruptcy Court

Distribution:
Attorneys of record